CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND DEANIA JACKSON,	*	
VERSUS	*	NO. 96-8461 DIVISION "I" SECTION 14
THE AMERICAN TOBACCO COMPANY, INC., ET AL.	*	

Transcript of proceedings before the Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *

Tuesday Morning Session
February 18, 2003
10:00 a.m.

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Tuesday Morning Session
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P R O C E E D I N G S

* * * * *

(In open court with a jury present:)
THE COURT:
Good morning.
Mr. Herman, are the plaintiffs ready to continue with the presentation of evidence?
MR. RUSS HERMAN:
Yes, we are, Your Honor.
THE COURT:
And we are going to complete the deposition of Mr. Bible today?
MR. RUSS HERMAN:
That's correct.
THE COURT:
Are you ready to proceed?
MR. RUSS HERMAN:
Good morning, Judge. Good morning, ladies and gentlemen. Good morning, counsel for the cigarette companies.
We will continue with Mr. Bible's deposition, present CEO of Philip Morris.

-- -- --

GEOFFREY BIBLE
being previously duly sworn and presented by videotaped deposition, testiffies and says further as follows:

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EXAMINATION (Continued)

A. May I see the document, please?

Q. Certainly. I would be happy to show you a document which you may not be aware of and we will identify it for the record. I am going to give you a copy and I am going to give your attorney a copy, as I have done throughout.

This is trial Exhibit Scott 3514.

Take your time.

A. Yes, I have read it.

Q. First of all, this document is dated November 13, 1978; correct?

A. Yes.

Q. It is on the letterhead that says Philip Morris U.S.A., Interoffice Correspondence, Richmond, Virginia; correct?

A. Yes.

Q. And it says to the file; correct?

A. Yes.

Q. From T. S. Osdene.

Mr. Osdene was a Philip Morris research person; correct?

A. Yes.

Q. The document you have now read in full; correct?

A. Yes.

Q. And it relates to the Council for Tobacco Research; correct?

A. Yes.

Q. The Council for Tobacco Research was funded by Philip Morris and other tobacco companies; correct?

A. And I believe other organizations, but I don't know exactly which.

Q. You do know that Philip Morris was one of the funding mechanisms for the Council for Tobacco Research; correct?

A. Yes.

Q. Would you turn to the last page?

A. Yes.

Q. Would you read it for the record, please? Read it aloud for the record?

A. Subjects to be avoided.

(1) developing new costs for carcinogenicity;

(2) attempt to relate human disease to smoking;

(3) conduct experiments which require large doses of carcinogen to show additive

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effect of smoking.
Q. Did Philip Morris Research in the United States ever advise you of the document you have just read?
A. Not to my knowledge.
Q. Let me ask you about youth smoking, children smoking.
Were you aware in 1953 that the Roper Company did a study for Philip Morris that involved 13-year-olds smoking and 14-year-olds and 15-year-olds and 16-year-olds and other ages and their smoking habits?
A. Actually I am not sure. I do recall seeing one study. I am not sure of the date.
Q. This study would have been -- let's see if we can refresh your memory.
I am going to show you questions 5-A and 6-A from a 1953 Roper survey, and I am going to give you the entire study just so that we can see that I didn't take it out of context.
It is Exhibit No. 3447.01.
If you would, I have handed your counsel a Study of People's Smoking Habits and Cigarettes, Volume 1, prepared for Philip Morris and Company, Limited, Inc., in August of 1953, Copy No. 6.
Take a look at this document, if you would.

Have you seen this before?
A. You know, I don't know. I may have.
Q. Would you turn to the tabbed pages?
A. Yes.
Do you mind if I look through it briefly?
Q. I don't mind at all, no, sir.
A. Yes, all right.
Q. Would you turn to the tabbed portion?
A. Yes.
Q. Would you please assist us and read for the record the Question 5-A?
A. Do you remember what brand of cigarettes you first started to smoke regularly?
Q. Then on the line where it says Cigarette Smokers, would you read the ages off, please?
A. Under 13 -- well, I think the title reads "Responses started smoking at age" under 13, 13 to 14, 15 to 16, 17 to 18, 19 to 20, 21 to 23, ans so on, 31 to 35, 36 or over.
Q. Do you understand now that in 1953 Philip Morris was doing research on what brands 15- to 18-year-olds were smoking?
A. Well, I really can't explain this. I see it is a study conducted by

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Roper.

To the best of my knowledge, none of this information was ever used to market cigarettes to young people.

Q. You know that because for fifteen years you were with a company that was selling Philip Morris cigarettes in Europe?

A. No. I asked people who were with Philip Morris U.S. at the time.

Q. Let's look at a study prepared for Philip Morris.

Are you familiar with a study done some twenty years later in 1974 by Roper of the smoking habits of young smokers?

A. I may have been shown that in previous testimony.

Q. Well, let's take a look at it. It is Trial Exhibit Scott 3413. I hand it to you and I hand it to your counsel and to the Special Master.

Take your time and review that.

A. Yes, I recall this document being shown to me.

Q. Would you turn to the tabbed portion?

A. Yes.

Q. First of all, the title of it on the first page is Study of Smoking Habits Among Young Smokers; correct?

A. Yes.

Q. And it is prepared for Philip

Morris, Incorporated; correct?

A. Yes.

Q. And that was the tobacco company of Philip Morris in the United States; correct?

A. Yes.

Q. It was in 1974; correct?

A. Yes.

Q. This is Copy No. 11; correct?

A. Yes.

Q. It is published by the Roper organization; correct?

A. Yes.

Q. If you turn to the tabbed portion, it says Summary of Major Findings on page three. Would you read for the record the paragraph that I have marked in yellow?

A. For example, Marlboro NM is the dominant brand among young white smokers with a 36 percent share of smokers. Kool is second at 14 percent.

This bears no resemblance to the young black market. Here Kool earns it with 59 percent smoking it most often, Salem second at 12 percent, and Marlboro NM, a very low third at 6 percent.

Against this picture we feel we must discuss implications for Marlboro in terms

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of the white market, and while it was not possible to separate blacks from whites on all measures of this study, we believe

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most overall comments would apply to whites since blacks represent a small percentage of the total.

Q. When did you first become aware that in 1974, Philip Morris was still conducting surveys of young smokers and their brand preferences?

A. Well, I am not sure where this says young smokers. It says smokers aged 24 and younger.

Q. Excuse me, sir --

A. At the outset.

Q. -- what is the title of this?

A. Study of Smoking Habits Among Young Smokers, young smokers aged 24 and younger.

Q. And younger; correct?

A. Yes.

Q. When did you first become aware of this study, quote, A Study of Smoking Habits Among Young Smokers?

A. I believe it was when I was shown it in testimony somewhere.

Q. Now, did I hear you volunteer during this deposition that Philip Morris never marketed to young smokers?

A. Yes, that is what I have been told.

Q. Who told you that?

A. I asked Jim Morgan, who was with Philip Morris, Incorporated in the early '60s. He became CEO of Philip

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Morris, Incorporated.

Q. When did you first ask him that?

A. After I saw these documents.

Q. You mean in the late '90s?

A. Yes, when somebody accused us of marketing cigarettes to young people and I saw some of these documents that disturbed me.

Q. Did Mr. Morgan tell you that?

A. Tell me what?

Q. Philip Morris never marketed to kids?

A. Yes, he said he had been there since the early '60s in the marketing department, and he never saw Philip Morris or was aware of or saw any marketing plans where Philip Morris marketed cigarettes to young people.

Q. Let's look at some Philip Morris documents. Let's first look at Scott Exhibit 3430.

This document, Scott Trial Exhibit 3430, is on Philip Morris U.S.A. stationery, is it not?

A. Yes.

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Q. It says Interoffice Correspondence; correct?
A. Yes.
Q. It is dated May 21, 1975?
A. Yes.
Q. It is from Mr. Myron Johnston;

correct?
A. Yes.
Q. Was Mr. Myron Johnston in marketing?
A. I don't know. I believe he was, but I don't know. I think he was a market researcher.
Q. Market researcher --
A. Or let me correct myself. I am not sure what his job was, but I think he was in statistics.
Q. He is writing this interoffice Philip Morris U.S.A. memo to Dr. Seligman, who was in research and development; correct?
A. Yes.
Q. Have you seen this document before?
A. I believe it was shown to me in some prior testimony.
Q. Would you read the language indicated in yellow at the bottom of the first page for the record?
A. May I then put it into context?
Q. Sir, absolutely, sure, you can.
A. The teenage years are also important, because those are the years during which most smokers begin to smoke, the years in which initial brand selections are made, and the period in the life cycle in which conformity to peer

group norms is greatest.
And it is my understanding that Mr. Johnston has explained that this information that he has was gathered from public sources, and he was simply commenting on public information.
Q. And he was doing that in a Philip Morris internal document; correct?
A. That is a Philip Morris document.
Q. When you talked to Mr. Morgan about teenage smoking, did he point this document out to you?
A. Not particularly. I think I said to Jim I had seen a number of documents in testimony, so I may well have referred to this particular document where there were suggestions that we marketed cigarettes to children.
That is when he made his comments to me that he had never seen nor had I ever heard of or seen anything that related to Philip Morris marketing cigarettes to

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children. No marketing plan existed.
Q. Did you indicate under oath in Minnesota when the question was directed to you for the ten years or so between 1983 and 1994, that Philip Morris had spent -- that is, the tobacco company, had spent between 15 and 16 billion dollars on advertising and marketing?
A. I did recall seeing it.

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I don't know if I said that or not. Could I see what I said?
Q. Sure. Since you have the transcript, why don't you take a look at page 6075, lines 13 to 24, and I am going to read the question and answer.
Question, this is from Mr. Viresi: If I told you that Philip Morris spent $15,914,336,835 on advertising, marketing and promotion from 1983 to 1994, would that surprise you?
Answer: From 1984 to 1990?
Question: 1983 to 1994.
Answer: In the domestic cigarette companies?
Question: That's correct.
Answer: How many billion dollars?
Question: 15.914 billion.
Answer: I can understand that.
Is that your testimony?
A. Yes.
Q. During that same period of time -- strike that.
Did you state under oath at the trial in Minnesota when you were shown the 1974 Roper report where the question is asked how old do they happen to be, it starts at age 14 or younger, that if they were actually conducting a survey of people that age, of children that age, their smoking habits, that you were ashamed of that?

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A. Yes, I --
Q. The question was you stated under oath you were ashamed if Philip Morris was conducting surveys of underaged smokers?
A. Yes, I did say that.
Since I said that, I've made inquiries to try to clarify what the purpose of that was. And I think I have read some depositions or some comments somewhere that it was simply to gather information for forecasting purposes, but nothing was ever used for marketing.
Q. In fact, you stated you were shocked that such surveys had been done; correct?
A. That's right, I was. I was. I am not denying that.
Q. Giving you Exhibit 3566, sir, Scott trial exhibit, this is the exhibit

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in 1981 written by Mr. Johnston of Philip Morris.

Have you testified under oath before that it wasn't appropriate for Philip Morris to be reporting to a number of people within the company, including people in management, about the average daily consumption of teenaged smokers, not even teenagers, 12 to 18?

A. I don't remember. But if I had, can I see where I said it, please?

Q. Sure. It is at page 6143 of

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your testimony under oath in Minnesota. It begins at line one.

A. Yes, I did think that is not appropriate.

Q. Question: Do you think it is good for Philip Morris to be reporting to a number of people within the company, including people in management, about average daily consumption of teenaged smokers, not even teenagers, 12 to 18?

Answer: No, I don't think that's appropriate, sir.

Do you see the next question and answer?

A. Yes, I do.

Q. Read the next question and answer into the record?

A. You are ashamed of that, aren't you, sir?

Well, I am ashamed of it, but I don't know the circumstances under which this was done.

Could I explain, add a little more to that comment?

Subsequent to that I inquired about the circumstances, and again I was told there was no use of these documentations in any marketing plans at all. No marketing plans were made for Philip Morris, and never have we marketed cigarettes to youth, to the best of my knowledge, from those that I have asked.

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And I must say -- I am not denying what I said then, but I must say I felt better when I got that confirmation.

Q. Did you ever say under oath that you would be horrified if people in operations in the tobacco company received memos regarding the percentage of the market Marlboro had of kids under the age of 18?

A. May I see it? I quite likely did, but I would like to see it to have my memory refreshed.

Q. Sure. Look at 6105 of your testimony under oath. Begin at line one.

A. Yes, I see what you are referring to.

Q. Is your memory refreshed that

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with regard to kids under 18 in the market, that you would be horrified if people in tobacco operations were receiving this market information about Marlboro?

A. I think that what I was referring to here was that if information of the nature in that report was being conveyed to manufacturing people or operations people, I would be horrified. I saw no reason for that.

But if I could explain, since then I have made inquiries about these circumstances and I have been told that this information was never used for

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marketing plans at all ever.

Q. Who told you that? Was it Dr. Morgan?

A. Jim Morgan. He was the CEO and he was in the brand group in the 1960s, so he was there throughout the period.

Q. The person that told you that, has he been listed as a witness to come to trial in New Orleans?

A. I have no idea.

Q. When we started off today, you indicated that you began smoking at age 14 and had quit twice; correct?

A. Yes.

Q. In 1998, after you became chairman and CEO of Philip Morris Companies, were you interviewed by The New York Times Magazine?

A. I don't remember.

Q. Were you asked, as reflected in this New York Times Magazine on June 21, 1998, if you felt badly about selling cigarettes? Do you recall that?

A. Actually, I don't recall the interview.

Q. Did you state in that interview or in an interview with The New York Times Magazine on June 21, 1998, that you didn't know what anybody would turn to if they didn't smoke?

A. As I said, I don't remember being interviewed.

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Q. I am going to give you copies of the interview, and we will mark it for identification purposes as Bible Exhibit 2. Mark it Bible 2, please.

Have you read it?

A. Yes, I have.

Q. Do you see a quote attributed to you: Do I feel badly about selling cigarettes, end quote.

No, I do not, but I don't know why I should. I feel badly about children smoking cigarettes, but I don't know how to deal with that. End quote.

Do you see that?

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A. I do.
Q. Were you quoted correctly?
A. Well, you know, I honestly don't recall this interview, but I can't deny that they claim they interviewed me and I said that.
Q. All right. Let's look at the bottom of that column.
Quote: What do you think smokers would do if they didn't smoke?
And would you read the response attributed to you?
A. You get some pleasure from it and you also get some other beneficial things such as stress relief.
Nobody knows what you'd turn to if you didn't smoke. Maybe you'd beat your wife, maybe you would drive fast cars, who

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knows what the hell you'd do.
I wonder if I could just explain something there?
Q. Yes, you can. But were you quoted correctly?
A. Well, I don't know. But it claims that I made these statements, and I am not going to deny it. But I don't recall it.
But let me just say one thing here that is attributed to me: Maybe you'll beat your wife. I have very strong feelings about that matter, and that is why Philip Morris today is the biggest supporter of domestic violence campaigns in the United States.
And I don't want that taken out of context. That is why I would like to make that clarification.
(End of videotaped deposition presentation.)
MR. RUSS HERMAN:
May it please the Court, that concludes Mr. Bible's deposition.
The next deposition that we would like to play for the jury, Your Honor, and the Court is that of Mr. Tamol.
At this time, I would introduce my son, Stephen Herman, to the Court and to the jury.
MR. STEPHEN HERMAN:
Good morning, everyone.

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We are going to play for you the testimony of Ron Tamol, which was taken in Richmond, Virginia, in November of the year 2000.
Mr. Tamol worked for Philip Morris from 1963 to 1993. He was an engineer in research and development, then he worked as the leader of a brand development project, then he worked as a plant engineer, and then he worked as kind of an engineer on special projects like

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component parts and ventilation systems.
And this is his testimony.
THE COURT:
Approach the bench, counsel. One from each side is sufficient.
(At sidebar:)
THE COURT:
How long is this depo?
MR. STEPHEN HERMAN:
It is 40 minutes, I believe.
THE COURT:
I just wonder if we should take our morning recess now. We have only been at it about thirty minutes, but -- forty minutes.
I can't keep them until ten after eleven before we break, so we will have to interrupt it. Would you prefer to play it uninterrupted or interrupted?
MR. STEPHEN HERMAN:
We can take a break now because we

would like to read two documents after the deposition is over. It might be better to take the break now.
THE COURT:
Okay, we will do that.
MR. GAY:
Okay.
(In open court:)
THE COURT:
We are going to take our midmorning recess a little early so we won't have to interrupt this deposition to give you your recess. So we are going to take the recess now for fifteen minutes by the wall clock.
(In open court without a jury present:)
THE COURT:
Mr. Richards reports that he's feeling better.
MS. SULZER:
Mr. Reynolds.
THE COURT:
Reynolds. Rene Reynolds, excuse me, tells me he is feeling better.
Anything for the record by plaintiffs counsel as a result of the morning's session?
MR. RUSS HERMAN:
No, Your Honor.
THE COURT:
Defense counsel?

MR. GAY:
Yes, Your Honor.
I just want the record to formally note an objection to Mr. Herman's introduction which is I think a method of testifying by counsel which is inappropriate.
Also I want to make another -- renew

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our objection about introduction of financial information concerning the companies, which I think is prejudicial and under 403 has no place in this -- no relevance in this litigation.

And that was introduced twice during Mr. Bible's deposition. So we renew our objection along those lines.

THE COURT:

Did I not -- correct me if I'm wrong. Did I not hear that objection and rule on it when we were doing the deposition cuts?

MR. GAY:

You did, Your Honor.

THE COURT:

Okay. Thank you. We will recess until --

MR. RUSS HERMAN:

One other thing. I neglected to advise the Court --

THE COURT:

I'm sorry?

MR. RUSS HERMAN:

Yes, I'm sorry. I neglected to advise the Court and counsel opposite we also have the Spears deposition ready this afternoon should there be time for it.

THE COURT:

And what is the duration of that, do you know offhand?

MR. RUSS HERMAN:

The Spears deposition, as I recall, is one hour and forty minutes. Is that right, Carl?

One hour and forty-five minutes, Your Honor.

THE COURT:

Alexander Spears?

MR. RUSS HERMAN:

Alex Spears, yes, Your Honor. He's a Lorillard executive.

THE COURT:

The listing you gave us was an hour twenty-six.

MR. RUSS HERMAN:

Well, I'm in error.

THE COURT:

All right. We will recess until a quarter till.

(Whereupon, a recess is taken.)

-- -- --

(In open court with a jury present at 10:50 a.m.:)

THE COURT:

Please be seated.

Mr. Herman?

MR. STEPHEN HERMAN:

Carl, could we please show the jury Mr. Tamol's deposition?

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RONALD TAMOL

being previously duly sworn and presented by videotaped deposition, testifies and says as follows:

-- -- --

EXAMINATION

Q. Am I correct that you got a Bachelor's degree in mechanical engineering in 1956?

A. That's correct.

Q. And you spent three or four years in development and manufacturing for DuPont?

A. Yes.

Q. Then you spent around two years for U.S. Royal, which is now Uniroyal, as a design engineer?

A. That's right.

Q. And then you started with Philip Morris in 1963; is that correct?

A. That's correct.

Q. When you came to Philip Morris in January of 1963, had you had any experience in working with cigarette manufacturing?

A. No, none whatsoever.

Q. When you were first hired in

1963, you were hired as an associate engineer in the development department?

A. I believe that was the title.

Q. When you started, you were working on developing processes for reconstituting tobacco?

A. That is correct.

Q. In 1965 to 1969, you were the project leader of the brand development project; is that right?

A. I believe that's the year range, yes.

Q. You were promoted from an associate engineer to a research engineer?

A. That's correct.

Q. It was your job during that time, from '65 to '69, to develop new types of cigarettes?

A. To conceive and develop.

Q. Okay. From 1969 to 1972 or 1973, you worked in the development group with expanded tobacco?

A. That's correct.

Q. From 1972 or 1973 to around 1987 you were a plant engineer?

A. That's correct.

Q. And from 1987 until 1992 to 1993, you worked in the design engineering group?

A. That's correct.

Q. And in the design engineering group, you worked on developing new

machinery for the manufacture of cigarettes?

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A. Not so much for the manufacturing of cigarettes. For the cigarette components, tobacco, expanding tobacco, things of that sort.

Q. You also worked during that time on some ventilation systems?

A. Yes, I did.

Q. When you retired from Philip Morris around 1992 to 1993, you received a severance of some sort?

A. Yes, I did.

Q. It's my understanding that you got around $94,000 in severance and continued health benefits?

A. I believe. I'm not sure how it was -- nine months, some salary. Whatever it was, I can't recall exactly.

Q. Are you still on Philip Morris' salary retirement plan?

A. Yes, I am.

Q. You get what, around three thousand dollars a month from that?

A. Something along those lines, yes.

Q. It's my understanding that around 1991 you had over half a million dollars in Philip Morris common stock as part of your retirement plan; is that correct?

A. I can't recall exactly, but I

did have retirement, I did have money in the Philip Morris retirement plan.

Q. Do you remember whether it was more or less than a half million dollars?

A. It varied, of course, depending on the value of the stock. I don't know. I know I lost a large amount of money at one point when the stock went down.

Q. Have you sold all of your shares of Philip Morris common stock by this point?

A. Yes, I have.

Q. Are you being compensated for your testimony here today?

A. No, I'm not.

Q. How come?

A. Because I chose not to.

Q. You chose not to be compensated?

A. That's right.

Q. Why?

A. I didn't feel it was necessary.

Q. The document indicates that you're going to cooperate with the company in any dispute in which the company is involved. Is the company Philip Morris?

A. Yes, it is.

Q. The document indicates that that will include submitting to depositions, providing testimony and general cooperation. Is that your understanding of --

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A. Yes, it is.
Q. -- what you agreed to?
A. Yes.
Q. It says Tamol shall be reasonably compensated for his time and paid for all costs by him expended?
A. It says also including travel, lodging, long-distance telephone charges, and related expenses for such assistance.
Q. Why are you not being compensated for your time for giving this deposition?
A. Because I'm not a consultant, and basically I've been compensated over the years well by Philip Morris, in my opinion.
I think that the smoking controversy is way out of line. So I don't feel I need to be compensated for my time since I'm retired. I've not been called upon to travel, lodging for long distances or anything of that sort. If I did, I probably would ask for that compensation.
Q. Have you done anything to breach this general release and agreement that would make it so you weren't entitled to be compensated for your time here today?
A. No, not that I know of.
Q. Okay. When you started at Philip Morris in 1963, you were interviewed by Wakeham, Seligman, Resnick

and Dunn; is that right?
A. I believe so.
Q. To whom did you report, first from the period of '63 to 64, your initial job?
A. When I first came aboard, Henry Merritt, who was the project leader.
Q. Did he report to either Seligman or Wakeham?
A. He reported to Seligman.
Q. Then from '65 to '69 when you were project leader, who did you report to then?
A. I'm not exactly sure. I think it was Dick Thompson, who was a director at the time.
Q. Would it be fair to say that these five people, Wakeham, Seligman, Resnick, Osdene and Dunn, were the main people in the Philip Morris R&D Department while you were there at Philip Morris?
A. When I was there, yes.
Q. That would be true from '63 to '73?
A. Yes. When I was -- for that period I believe so, yes.
Q. From 1969 to '72 or '73 when you were working on the expanded tobacco process, the tobacco was soaked in

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ammonia?
A. That was our process, yes.
Q. You're talking about liquid

ammonia?
A. I think so. I think it was a liquid impregnation.
Q. The stuff that you use to clean your floors?
MR. DELACROIX:
Object to the form of the question.
A. No, you don't use ammonia to clean the floors. You use an ammonia compound to clean the floors.
Q. Okay.
A. But ammonia is basically a gas at room temperature. If you -- it is soluble in water. So you eventually could have the ammonia or a solution, I don't know how soluble, but that's where you get the ammonia odor from.
Q. Is it your understanding that ammonia is poisonous or toxic to humans?
A. Well, I would assume in very high concentrations it is. Most everything is toxic in high concentrations.
Q. This tobacco which has been soaked in ammonia was used in every Philip Morris brand?
A. I don't know that. I don't know.
Q. I'm going to show you your deposition from the New York tobacco litigation taken October 2, 1997.
Do you recall being deposed in

October of 1997?
A. No, I don't. I would have to read this.
This is all about what? This is about CO2 impregnation?
Q. I think it's about a lot of things.
But you don't recall being deposed by Jack Maistros in Richmond, Virginia
MR. WALLACE:
Mr. Herman, the confusion might be the size. You're showing him the mini. Do you have the regular size?
MR. STEPHEN HERMAN:
Why would that affect whether he remembers taking the deposition?
THE WITNESS:
What was the subject? I don't know. Was it by -- let's see what this is all about.
MR. WALLACE:
See the date?
THE WITNESS:
That doesn't mean too much.
Okay, yeah. Got to be the same thing
MR. WALLACE:

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See right here?
THE WITNESS:
Okay, yeah. The New York thing.
MR. WALLACE:
It's the same as the large one. This is just a reduced version.

THE WITNESS:
Yes. Yeah, the date rings a bell now. Yes, if that's the same, then I was -- I remember it.
Q. If you look at page 61 -- look at page 61.
A. Page 61, got you. Yes, I've got the page.
Q. It says: Before you left the expanded tobacco group in '72 or '73, was Philip Morris commercially utilizing expanded tobacco?
And what was your answer?
A. I said yes, they were. I assume they were.
Q. Then you were asked in which cigarettes, and what --
A. Again, I said across the board in all brands. That was an assumption on my part.
Q. Is that consistent with your recollection as we sit here today, that in 1972 or 1973 this expanded tobacco that was soaked in ammonia was used across the board in all brands?
A. I -- again, I can't tell you the exact year, but the whole goal of expanded tobacco was to put it in cigarettes to replace, to replace existing tobacco.
In other words, the whole idea of expanded tobacco, since it's a volume

product, was to put a larger volume piece of tobacco in the cigarette. That's why I assumed -- the goal was to put it in cigarettes.
Whether or not it was done in '72 or '73, I don't know. That was an assumption I made. I didn't know it for fact.
I didn't have the information that showed what exactly went into each brand, but that was my assumption, because that was the goal, to put expanded tobacco in every brand.
Q. Nicotine is toxic; is that correct?
A. At high concentrations, yes. Well, let me say this, it is very toxic.
Q. Do you know of any research to determine what the adverse effects of nicotine might be at Philip Morris?
A. No, I don't know of any --
Q. Do you know of any research at Philip Morris to determine what the benefits of nicotine might be?

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A. Specifically nicotine? I was involved with tar, benefits of tar flavor-wise in developing cigarettes. That's the only thing I knew about was tar.
Q. Are there any benefits of nicotine?
A. I think at the time we thought it was one of the more flavorful components of the tar.

Q. Why did you think that?
A. Because people would at a certain level, if it got too low in tar delivery, they didn't like the cigarette anymore. They went to a competitive brand.
Q. Were you ever persuaded that your belief at that time -- you said at that time we believed that nicotine was important for taste. Has that belief ever changed?
A. No. Not while I was developing cigarettes, no.
Q. What about as we sit here today, do you believe that nicotine is important for taste?
A. Yes, I do.
Q. Does nicotine add flavor?
A. Yes. It's part of the taste package, flavor.
Q. What is nicotine malate?
A. It's some sort of nicotine compound.
Q. What did you use it for?
A. I didn't use it. I'm not familiar with it.
Q. You didn't add nicotine malate to reconstituted tobacco?
A. To my knowledge, no.
Q. Wasn't there a monthly report in around February 1994 that referenced adding nicotine to reconstituted tobacco?

A. I don't know, but if there was, it wasn't my report.
Q. Do you recall having notes about nicotine malate being added to reconstituted tobacco?
A. I don't recall. I may have because I was reviewing the monthly reports.
Q. From 1965 to 1969 when you were a project leader of the brand development project, you were trying to make a cheaper cigarette; is that right?
A. No. Trying to make a -- trying to conceive of different cigarettes. Not necessarily cheaper, but one that would appeal to, more than the run-of-the-mill cigarette, appeal to the public.
Q. Was part of that goal that you were trying to make a cheaper cigarette?
A. If you put expanded tobacco in

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large quantities, yes, it is cheaper. It replaces very expensive tobacco.

Q. Am I correct that it was not your goal at that time to make a healthier cigarette?

A. Well, there was no such thing as a healthier cigarette when I was in that area.

Q. If you look back at the bottom of page 30, you were asked:

Was there any discussion about making a healthier cigarette?

13999

And your answer was: To my knowledge, no.

A. I'm sorry, what page?

Q. Bottom of page 30, line 24.

A. Bottom of page 30, line 24. Was there any discussion of making a healthier cigarette?

That's right, because we really couldn't define what's a healthier cigarette. I had my thoughts on what a healthier cigarette was, but there was no general consensus on what a healthier cigarette was.

Q. How do you know whether there was a consensus if you never discussed the topic?

A. Well, because we weren't involved in making a, quote, healthier cigarette. I wasn't.

I was trying to make cigarettes more acceptable to the public. If they produced less tar and nicotine, I assumed that was a healthier cigarette.

Q. You were asked whether there were discussions about making a healthier cigarette, and your answer was no. Is that a correct answer or would you like to change that?

A. Well, discussions where? At the coffee table or meetings?

There was probably some discussion at a coffee table, but there wasn't

14000

discussion in development meetings, research meetings, things of that sort.

The whole goal was to reduce tar and delivery. So if you define that as a healthier cigarette, yes, that was discussed many times, reduce tar delivery with a taste that will still be acceptable to the smoker.

Q. Do you define that as a healthier cigarette?

A. No. That's your definition.

I think that was a goal of ours, but we never defined it as being healthier. It was in the direction supposedly that we wanted to go.

Q. When you said you had your own ideas, what were your own ideas?

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A. Reducing tar and nicotine.
Q. Did anyone at Philip Morris or any lawyers acting for Philip Morris advise you that you should destroy documents?
A. No, not so. No one at all.
Q. Is it your policy that at the end of certain meetings, someone would come around and pick up all the notes that were made during the meeting?
A. No. I have never been in a meeting where that happened.
Q. Okay. Now, is it fair to say that from 1965 to 1969 while you were project leader in the brand development

14001

project, your job was basically to investigate ways to modify or develop new types of cigarettes, including investigation done at the request of the New York office?
A. That's correct.
Q. Is it fair to say that during the time period from around 1963 to 1965 you were unfamiliar with the cigarette industry and were talking to people throughout R&D to find out what are the first steps in developing cigarettes?
A. Well, not the first steps in developing. How they are manufactured, how they are made, what they consisted of, what a filter was, what tobaccos were in the cigarette. I knew nothing about a cigarette.
Q. You testified in 1997 that you didn't do any work involving nicotine. Are you sticking with that story?
A. What do you mean by work involving nicotine? I didn't add nicotine, I didn't manipulate nicotine. Nicotine came along with the cigarettes that I developed.
Q. If you look at page 140 of the deposition there starting at line 14, you said: What work did I do involving nicotine?
The answer to the question was yes.
You said: None that I can recall.

14002

You were asked: None of your work ever touched upon nicotine?
You said no.
A. Well, again, what do you mean by touched upon nicotine? I assumed that I was adding nicotine to cigarettes, and I did not do that. That's for the question, that's the answer I gave.
Obviously any tar delivery has nicotine in it. I measured hundreds and hundreds of deliveries of cigarettes analytically and determined what the tpm and what the moisture -- tar is tpm minus water and what the nicotine delivery is,

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because that's what we measured at the time. Those were the only handles that we had.

Q. Now you're saying your work did touch upon nicotine.

A. In the course of the smoke results it did. I did not add nicotine or in any way manipulate nicotine, other than the manipulation of the delivery of the cigarette which contains nicotine.

Q. You testified in this deposition that you never told anyone that nicotine was a substance to get people hooked. Are you sticking with that story?

A. Yes, I am.

Q. I'm going to show you Scott Trial Exhibit 3164, which I will also mark as Scott Tamol Exhibit F.

14003

Did delivery refer to the amount of menthol that was delivered, the amount of nicotine that was delivered, or the amount of tar that was delivered?

A. In this case it was menthol that was in the smoke, which was in the tar.

Q. Okay.

A. Might have been, might have been in the gas phase. I don't know that for a fact.

Q. If you look at the second page, which is Bates 2867 -- these are your notes?

A. Yes, they are.

Q. Off to the right towards the bottom, it says one, then looks like no taster or taste?

A. No taste. I would say no taste and low tar and high gas phase cigarette.

Q. What does that mean?

A. If you don't deliver enough tar to get flavor, there is no taste there. High gas phase, by putting in -- at that time I believe they were using charcoal filters, which modified the gas phase, and people talked about the gas phase was unacceptable.

Q. Were you ever involved in any project to see whether it was feasible to add nicotine to the charcoal filter?

A. No, never.

14004

Q. Number three, company with something. Can you read that?

A. Company with flavorful, low tar, enough nicotine is represented, smoker is to the something smoker hooked, waiting will reap huge benefits.

Q. What does that mean?

A. I'm not sure. That was done, you know, in '65, many years ago.

Waiting? I don't know, waiting for what?

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Q. Aren't you indicating that you have to have enough nicotine in tobacco smoke?
A. At that time, yes. Because that's for the flavorful part of it.
Q. Isn't that somewhat inconsistent with what you just told me that you weren't involved in research about getting enough --
A. No.
Q. -- nicotine in the smoke?
A. No, no. You keep saying nicotine and I keep saying it's tar.
Tar follows -- nicotine follows tar. I had no way whatsoever to modify nicotine.
So therefore you delivered lesser tar. You go too low, people do not have the flavor in the lower tar and nicotine cigarettes.
So I keep saying that and you keep

trying to say I'm talking about nicotine. Nicotine went along. Nicotine was a flavor component of tobacco smoke.
Others thought there were other flavor components. Ed Desik thought there was compound 160. We worked on that for years.
So at that point in time, it was unknown exactly what the stellar flavor components were of the cigarette. Nicotine was one of them.
Q. I can't tell if it's a three or a five. Do you recall this document?
A. It's my writing. Yeah, but it looks like -- I'm trying to get the time frame to see if this is when I was very naive in cigarette technology or whether I was more sophisticated.
Q. Okay.
A. So I read it as January '65, which is very early in my naive situation of trying to learn what cigarettes were, how they were made.
Q. Okay. Let me show you a two-page exhibit I will mark Scott Tamol H. It says market something of a health --
A. Potential of a health cigarette. M. E. Johnson -- Johnston, who worked at R&D, I believe, in Bill Dunn's group.
Q. When you were talking about the

health cigarette, was one of the target groups young women?
A. What I have got here, possible application of king filter.
All right, let me tell you what the king filter was. That was my concept of having a cigarette with a large designed filter with design on it to act as a -- as

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a -- oh, they had the smoking device where you put a cigarette in the, I'm looking for the word.

Are you familiar with what I'm saying?

Q. Like those plastic things from like the '20s?

A. Exactly, exactly. What are they called? Gees.

Q. I don't know.

A. Anyway, this is a cigarette holder. Yeah, a cigarette holder.

So what I was trying to do there is make an aesthetically, you know, longer filter with a design on it. Actually longer wrapping with the same filter, and it had a checkered, some design, that might be in green for menthol and some others that would give you this cigarette holder concept. That was the king filter.

Q. You thought that would appeal to young women?

A. To women, I think, in general,

yes.

Q. All right. Back on the first page: The illusion, underlined, of filtration is as important as the fact of filtration.

Did you write that?

A. No, no. This is -- that is not my -- I never knew that. I never said that. It must have been something that Myron Johnston said in his synopsis.

Q. Do you know why you underlined illusion?

A. Well, it seemed strange to me at the time.

Q. It seemed strange to you --

A. Probably.

Q. -- at the time?

A. Probably.

I mean, illusion of filtration is as important as the fact of filtration.

Q. After working at Philip Morris for 30 years, 29 or 30 years, what does the illusion of filtration mean?

A. I don't know. We had facts on filtration. There was no illusion. Everything was measured.

Hell, the cigarette -- and they were published, and they had at a later point well beyond '66, they were published on the pack and things of that sort.

We developed a cigarette smoking machine the government took over to make

sure that in effect the numbers were correct. We gave them that smoking machine.

That was -- there was no illusion. The filtration was X percent, X delivery,

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et cetera, et cetera, for each cigarette. There was no illusion.

Q. Have you ever seen any Philip Morris document that indicates that testing by the smoking machine, according to the FTC method, was not accurate?

A. Not accurate how? As to how the smoker actually smokes? I think we had reservations about that.

But the accuracy of the instrument was very accurate. So the accuracy of the smoking machine was there, reproducible, et cetera.

Whether it simulated the smoker as he smokes is a question mark, was a question mark throughout my development years there.

Q. Okay. Are you aware of any studies, research or statements that the way that smokers varied from the machine is that in general they received more tar and nicotine than is determined by the FTC method?

A. No, I'm not aware of anyone saying that as such. But I think we were under the impression that the low delivery, the high pressure drop, low

delivery cigarettes, people really sucked on, period.

Q. What does that mean, people really sucked on?

A. Because they had that high delivery, high resistance to draw. So they really pulled on them to get more tar. They probably did get more tar.

Q. You think they got more nicotine too?

A. Well, nicotine follows tar. I keep telling you that. I wish you would not ask that again.

Q. It would stand to reason they would get more nicotine?

A. Yes. I keep saying that tar -- nicotine follows tar.

Q. Were you ever aware of any research on any product where nicotine did not follow tar?

A. No.

Q. Are you aware of any study or report or research that indicated that in some cases nicotine does not follow tar?

A. No. I'm not aware of that.

Q. I'm going to show you Scott Trial Exhibit 3031, which I have also marked Scott Tamol I. At the top it says Questions for Jet Lincoln.

Who is Jet Lincoln?

A. My recollection, he was a market researcher in New York, I believe.

Q. Last thing is: Nicotine to keep a man hooked, question mark.

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A. Yes.
Q. You were going to ask that question to Jet Lincoln?
A. Yes. You know, what minimum level of nicotine and tar will people accept.
Q. Doesn't say anything about tar, does it?
A. Well, that one fell with the other. Because what date was this? Give me a date. I don't know.
Q. I don't know. Do you recall when you wrote this?
A. Of course not. It was thirty some odd years ago. I'm trying to look at my -- at the note up here. I don't know what the date was.
Q. Is there any time at which it was your belief that nicotine didn't go along with tar?
A. No. I keep saying nicotine follows tar.
Q. Okay. I'm going to show you Scott Trial Exhibit 3429, which I will also mark as Scott Tamol J. I'll ask if you recognize that document?
A. It's not my writing.
Q. Okay.
A. whose writing is it? Do you know?

Q. I don't know. Do you know?
A. No, I don't.
Q. Was Jet Lincoln a recognized expert within Philip Morris of how much nicotine you need to keep people hooked?
A. I don't know. I have no idea. I think I met the man once.
Q. What prompted you to ask him how much nicotine you need to keep a man hooked?
A. I was trying to find out what the tar delivery, which includes nicotine, is the -- what people smoke for.
Q. He is up in New York, in marketing?
A. Yes.
Q. Why would he have the answer?
A. He is studying marketing, doing surveys of people.
Q. Finding out how much nicotine to keep them hooked?
A. No. What cigarette delivery that the person will accept. That's what we're talking about during that period of time, the cigarette delivery people will accept.
Again, if you take all the tar out of the cigarette, it's unacceptable. If you put in too much, the smoker finds it is too much, quite frankly. Without a filter, people can't smoke that cigarette. It has too much tar.

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So somewhere in between is an acceptable tar level.

Q. I'm going to show you Scott Plaintiffs' Exhibit 3163, which I will mark as Tamol K.

These are your notes?

A. Yes.

Q. Okay. Number four, what does that say?

A. Can I review the date? This is February 1, I believe, '65, just after I got into the brand development project as a single developer.

Now, your question is what now?

Q. What does number four say?

A. Determine minimum nicotine required to keep normal smoker hooked.

Q. Determine minimum nicotine required to keep normal smoker hooked?

A. Right.

Q. Do you have any idea why you might have made that note in February of 1965 about determining the minimum nicotine required to keep a normal smoker hooked?

A. Well, because that was at that time the major flavor component of the cigarette. We all said people smoke to have the taste of nicotine.

Q. They were hooked on flavor?

MR. DELACROIX:

Object to the form of the question.

A. Again, you keep using the term hooked. I used hooked when I was in high school. I accused my mother of being hooked on caffeine in coffee. That was -- to me, hooked was a habit.

Q. Was she --

MR. DELACROIX:

Let him finish.

MR. STEPHEN HERMAN:

I apologize.

A. Now the connotation is completely different. I emphasize that in several past depositions, I believe. And things change. I can give you some examples, if you want, how words change meaning.

In Richmond there was a bar that was called The Gay '90s Bar. It's still in existence. However the owner, whom I know personally, one day when gay was not happy, gay turned out to be homosexual, he found his bar full of homosexuals. He stopped, closed the thing down, and changed the name to O'Toole's. So there is one word that had a complete change of meaning.

So hooked at this time -- when I was growing up, we would say Joe is hooked on Sally or something of that sort. It was

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commonplace. It doesn't have the connotation of being unable to do anything, such as a heroin addiction or

14014

one of those things, as to my understanding. I'm not an expert in the area.

You keep emphasizing the term hooked. That was a common term I used trying to -- to me it meant habitual, something along those lines.

Q. But now you would use the word addicted?

A. No, I would not. I don't think cigarette smoke is addictive.

Q. Okay. You wouldn't say hooked anymore?

A. No. I wouldn't say hooked, because that's, to me that has a connotation of cocaine or some of the very heavy drugs.

Q. Today you're saying hooked means addicted?

A. I think so. Yes, I wouldn't use it.

Q. In 1965 hooked didn't mean addicted?

A. To me it did not.

Q. Okay. Now, you said your mom was hooked on coffee?

A. I used to kid her, yes. The doctor said stop smoking coffee, and she stopped smoking coffee (sic). To me hooked could be or the addicted means someone can't stop smoking coffee, can't stop eating chocolate for instance.

14015

Q. Did she like coffee because of the taste or caffeine?

A. The caffeine was the taste. She didn't like the decaffeinated coffee.

Q. You think she was hooked on caffeine the way people are hooked on nicotine?

A. No. I accused her of being hooked. But the minute that she -- you know, being hooked, that she couldn't give it up or something, that may be or maybe not, whatever. It was just joking around.

And she gave it up like that. So obviously it was not, caffeine in coffee is not an addictive -- although it is an alkaloid, but it doesn't appear to me to be addictive.

Although a lot of people can't give up smoking and they have difficulty, but everyone that I knew that smoked had quit smoking, quit very easily.

Q. From where did you get the information or the belief or the understanding that today hooked means addicted like to heroin or cocaine?

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A. Because people like you keep using it in that connotation.
Q. And people like me have used words like addicted to heroin and cocaine, kind of like cigarettes?
A. I don't know if you have done

it, related it, but I have a distinction between the two.
Q. Bates No. 2881, which was previously marked as Scott Tamol Exhibit L, are you familiar with this document?
A. It's my handwriting.
Q. Says added nicotine malatar to TFP; is that correct?
A. Let me read it. Saratoga, added nicotine malate to TFP, added nicotine to -- I mean, that's what it says, but I don't recall adding anything to TFP.
As a matter of fact -- well, when I was in TFP, but maybe it was added later. But I don't know. I can't recall this at all.
Q. What is TFP?
A. Tobacco formative product. That's the paper-making technique of reconstituted tobacco, which is stems --
Q. Was that used widely in Philip Morris brands?
A. Eventually it was.
Q. You have no idea why you were adding nicotine malatar to TFP?
A. No. I was not adding nicotine malate. It's malate, not malatar.
Q. I'm sorry.
A. Malate. That's the compound you ask me about before. I don't know.
In '65 I was -- that's 1402 project,

that's some kind of a note that I made probably looking at monthly reports would be my guess, but I don't know that for a fact.
That's like 14, 2100, 1402, 0706.
Q. What's Saratoga? Isn't that a brand?
A. That was a brand at the time, yeah.
Q. Do you know whether nicotine malate was added to the Saratoga brand?
A. It was on the market and we didn't have the TFP available. So I would say no, it wasn't, if we didn't even have the process at the time would be my guess. I would say no.
I'm just talking about filter and filter plug. Saratoga, that was a brand we were making. I believe it had a plastic box. I think that was its claim to fame.
Q. Okay. Now, you came to Philip Morris in '63, correct, without any

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knowledge of the tobacco industry?
A. That's right.
Q. You talked to people throughout R&D to find out where to start in developing new cigarettes?
A. I talked to some people, primarily the filter people and cigarette-making people, who were Lew Long and -- I'm not sure who was the project leader of

filter development.
Q. In any event, whoever you talked to, the people at R&D, the main people were people like Wakeham and Seligman and Resnick and Osdene and Dunn; right?
A. Yes.
Q. So were there ideas that filtered throughout the R&D Department?
MR. DELACROIX:
Object to the form.
A. Not necessarily. These people were at the upper levels. We were down here at a certain level, learning how to make cigarettes and things of that sort.
Something that filtered down through New York through them they would have been aware of. We made them aware by telling them what we were doing in monthly meetings.
Q. Filtered down from New York by people like Jet Lincoln?
A. No, I would say not that I know.
Q. You want us to believe that it's just a coincidence that your notes repeatedly talk about how much nicotine is required to keep a smoker hooked?
A. I don't want you to believe it, but you should believe it because it's the truth.
Again, I repeat: My cigarettes that

I designed, et cetera, were delivery of tar and nicotine. Nicotine followed tar. I had no way of reducing nicotine without reducing tar.
Our goal was to reduce the delivery of a cigarette on some of the cigarettes (sic) so it would have an acceptable flavor at the lower delivery.
Q. So the idea that you needed to have a certain amount of nicotine to keep a smoker hooked, that had just occurred to you out of thin air?
MR. DELACROIX:
Object to the form of the question.
A. No. It was obvious that to me, that someone, at some level the smoker no longer gets satisfied.
A cigarette I developed later was a per puff profile where I basically developed a flavorful cigarette that the

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last puffs were as flavorful as the first puffs.

So I was basically a flavor delivery person developing cigarettes.

Q. In the context of doing that and in the context of trying to determine how much nicotine you need to keep a normal smoker hooked, you want us to believe that was something that you wrote completely independent of the rest of the Research & Development Department?

A. I can't say the rest of the

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Research & Development Department. These were notes to myself. I was aware that if you go too low in delivery of cigarettes -- and we all were aware, everyone in R&D, and everyone outside of the company knows that if you reduce the delivery too low, people won't smoke.

Q. So everyone in R&D around this time knew that you needed to have a certain level of nicotine to keep smokers hooked?

A. No. You keep saying nicotine. You're hung up on nicotine. It was a combination of tar and nicotine.

We all believed that nicotine had to be in the tar, which followed. Later the company, as I understand it just from being on the sidelines, developed a reduced -- they went and took the nicotine out of tobacco and the cigarettes were lousy.

Q. Your notes say nicotine required to keep smokers hooked. They don't say tar required; right?

A. Well, to me it was obvious that nicotine followed the tar. And nicotine was the flavorful component to our knowledge at that time. Maybe 180 was the flavorful component. I don't know.

All we know is that we were able to measure nicotine, and nicotine has been in tobacco for years and years and years. So

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we argued that was the flavorful component that people wanted to smoke for.

Q. Have you ever seen, prior to today when I showed it to you, Scott Tamol J, Trial Exhibit 3429?

A. No, I never saw this document.

Q. Okay.

A. I can't recall. No reason for me to have seen it. Especially I think we agreed that the date was '74 or '75 something, well beyond my period of activity.

MR. DELACROIX:

I have a few questions.

Q. Mr. Tamol, you have explained to this jury, the ladies and gentlemen of the jury, a lot about some of these

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handwritten notes that you made back in the '60s; is that right?
A. Yes, I did.
Q. Is it fair to say that you made quite a few personal notes as you were learning about the practice of manufacturing cigarettes at Philip Morris?
A. Yes, I did. I was basically brainstorming myself. And my school is really a founder of brainstorming, you might say. Attribute it to the University of Buffalo.
But, yes, these were notes to myself.
Q. Your training, as I think you have told the ladies and gentlemen of the

jury, is in engineering; is that right?
A. Yes.
Q. You're not a chemist or biologist, are you?
A. No, no knowledge at all.
Q. In fact, did you do any research work for Philip Morris in the chemical or biological areas?
A. No, nothing.
Q. Did you do any testing of humans or animals regarding cigarettes while you were at Philip Morris?
A. No, none whatsoever.
Q. Are you a -- do you have any experience in toxicology?
A. No, none at all.
Q. Do you have any experience in pharmacology?
A. No.
Q. Do you have any experience in addiction or dependence?
A. No.
Q. Is it your understanding that there are experts qualified in these fields who can assess those areas?
A. I would like to think so. I don't know that for a fact.
Q. These areas involving addiction and dependence, those were not areas of expertise that you felt you were qualified in at any time while you worked at Philip Morris; is that correct?

A. That's correct.
MR. DELACROIX: I have no further questions. Thank you, Mr. Tamol.
(End of videotaped deposition presentation.)
THE COURT:
Is that the end of the deposition?
MR. STEPHEN HERMAN:
It is, Your Honor.
At this time we would like to publish or introduce two additional documents. The first is Scott Trial Exhibit 3429. It's been preadmitted.
Carl, pull that up.

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THE COURT:
3429?
MR. STEPHEN HERMAN:
Yes, Your Honor.
THE COURT:
It was admitted. You may publish it.
MR. STEPHEN HERMAN:
Thank you, Your Honor.
Carl, if you could just highlight the top where it has PM USA? Thank you.
It says PM USA MGT. review, May 19, 1975. Then it has some initials.
If we could go to page three, which I believe is the last page of the document?
THE COURT:
You may publish it.
MR. STEPHEN HERMAN:
Carl, could you highlight -- it's not

really a paragraph, but the writing at the bottom of the page? Thank you, and blow that up?
Can everyone see that?
JL period, nicotine levels.
And then in the left column it says: Check how to reduce difference.
In the right column it says: Versus FTC tars, PM versus RJR, we are lower, puff counts 8.8, 9.2. Adjust to make same puff. Will this improve nicotine, question mark. Is it important, question mark. Puff by puff. J period L period looks at 1.3 nicotine as ideal.
And if defense counsel would like to highlight anything from the same document?
MR. SHOLES:
Nothing further, Your Honor.
MR. STEPHEN HERMAN:
The next document plaintiffs would like to offer is Exhibit 3190. It is an interoffice memo from Mr. Seligman to Mr. Thompson and Mr. Tamol dated April 19, 1966.
And it has not been admitted into evidence yet.
THE COURT:
Any objection?
MR. SHOLES:
No further objections, Your Honor.
MR. STEPHEN HERMAN:

May we publish, Your Honor?
THE COURT:
Well, Mr. Sholes said no further objections.
Does that mean you have none, Mr. Sholes, or none other than what's been noted in your pleadings?
MR. SHOLES:
None other than what's been noted in the pleadings, Your Honor.
MR. STEPHEN HERMAN:

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Should we approach, Your Honor?
THE COURT:
Let me have a copy of that document, please?
(At sidebar:)
MR. STEPHEN HERMAN:
This is the original exhibit which we got from Mr. Tamol's files. We have agreed to introduce instead the clean copy off the Philip Morris web site, which is Mr. Thompson's version of the same document.
The original document --
THE COURT:
Well, let me say this. As to the authenticity, I believe it is what it purports to be.
MR. SHOLES:
Yes, sir.
THE COURT:
I'm going to overrule that.

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And it's Philip Morris interoffice correspondence. Your other objections are hearsay within hearsay?
MR. SHOLES:
Yes, sir.
THE COURT:
Overruled. The document will be received into evidence.
MR. STEPHEN HERMAN:
Thank you, Your Honor.
(In open court:)
MR. STEPHEN HERMAN:
May we publish, Your Honor?
THE COURT:
Yes. The objections are overruled. You may publish the document.
MR. STEPHEN HERMAN:
Carl, if you could, please, highlight the heading. Thank you.
It says Philip Morris Incorporated Interoffice Correspondence, Richmond, Virginia.
Then if we could go to the subject field, to and from?
From Mr. Seligman to Messrs. Thompson and Tamol, April 19, 1966. Subject: Long Filter Discussion.
Could you please highlight the first paragraph? Thank you.
While in the New York office on April 7, 1966, I discussed the long filter concept with Jet Lincoln. He had several

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comments which I would like to pass on to you.
Then if we could highlight the last two sentences of the next paragraph starting with "Jet was intrigued"?
Can everyone see that? It says:
Jet was intrigued with the fact that the cigarette looked like a, quote, health

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cigarette, end quote, but really wasn't.
And defense counsel can highlight any portions of the document he deems appropriate.
MR. SHOLES:
Nothing further, Judge.
MR. STEPHEN HERMAN:
That's it, Your Honor.
THE COURT:
The next order of business, Mr. Herman?
MR. RUSS HERMAN:
The next order is that Mr. Carter has documents to be published to the jury.
THE COURT:
Are you ready to proceed?
MR. CARTER:
My name is Ken Carter, I would like to say good morning to each and every one of you.
Good morning, Your Honor.
Your Honor, at this time we would like to --
THE COURT:

Do you have the microphone on, Mr. Carter?
MR. CARTER:
No, I don't.
Is that okay, Your Honor? How is that?
Thank you very much.
At this time, Your Honor, and ladies and gentlemen of the jury, we would like to read some pertinent parts of certain exhibits.
Your Honor, the first exhibit is Scott Exhibit 4482.03.
MR. WITTMANN:
No objection, Your Honor.
THE COURT:
The exhibit will be received.
MR. CARTER:
Thank you, Your Honor.
May it please be published?
THE COURT:
You may publish it.
MR. CARTER:
This is an R. J. Reynolds document, the author is E. J. Fackelman, an employee of R. J. Reynolds, it's dated August 4th, 1983 and it's to RJR employees J. L. Gemma, E. N. Monahan, J. R. Moore.
And the subject of this memo, if you would highlight it, please, Carl? It's Success Rates of Quitting, and it's underscored.

And if you would please highlight the first paragraph and enlarge it, please?
This may not be absolutely clear so I will read it, if it pleases the Court and the jury.

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In a recent conditional forecasting session, Marty Orlowsky stated that a high percentage of smokers who quit smoking start again within a twelve-month period.

My recollection from the meeting is that Marty stated the number of 67 percent. Larry asked that I follow up on this subject to determine if we had any information on it.

I found three sources that speak to this issue. I've attached them for your reference.

Carl, if you would, highlight the second paragraph, and kindly enlarge it.

Again, some of the words may be vague:

While the sources are vague in the articles, it seems that there's agreement that roughly 80 percent of quitters start smoking again within one year. I thought you would be interested in this information since it potentially impacts the recent quitting phenomenon as it relates to industry volume.

And Carl, if you would, for the members of the jury, highlight the signature and the carbon copy.

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It's signed by Ernie, Ernest J. Fackelman, it's carboned copied to Mr. L. W. Hall, Jr.

This is Scott Exhibit 4482.03, and it's dated August 4th, 1983. Thank you, Your Honor.

If you would, Your Honor, the next exhibit would be Scott Exhibit 2926. It's a Lorillard memo.

THE COURT:

Has it been received?

MR. CARTER:

Thank you.

THE COURT:

No, my question is has it been received into evidence?

MR. CARTER:

No, it has not, Your Honor.

THE COURT:

Any objection?

MR. COPLEY:

Only the clean copy objection which has been resolved, Your Honor.

THE COURT:

If there are no further objections, it will be received into evidence.

MR. CARTER:

Thank you very much, Your Honor.

May we publish it?

THE COURT:

You may publish it.

MR. CARTER:

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Carl, if you don't mind, please highlight the heading and the date.

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This is a Lorillard memorandum marked secret, and it's dated February 13th, 1980. And again, that's Exhibit 2926.

If you would kindly for the members of the jury highlight the addressees and the author.

This is from Mr. Richard E. Smith, Mr. J. R. Ave, J. G. Flinn, Dr. A. W. Spears.

Carl, if you would, highlight the first paragraph and enlarge it, please.

If I might:

This note will specify the goal of the RT Information Task Force, summarize our discussions, and point toward next steps. Please suggest any modifications you feel are right.

Now, if you will, the next sentence where it establishes the goal of this memo, will you highlight it and enlarge it?

Determine the minimum level of nicotine that will allow continued smoking.

And Carl, if you will, also on this Exhibit 2926, go to page two for me, and for the members of the jury highlight the last sentence of the first paragraph on that page and the first full paragraph which begins with "Information."

May we publish the second page of that exhibit?

THE COURT:

You may publish it.

MR. CARTER:

I'm sorry, Your Honor.

I would also like for you to highlight, Carl, if you would, the last sentence of the first paragraph on this page two. There we go.

I'm going to read that entire sentence for the jury:

An implication here is that dissatisfaction with any nicotine level should be quickly felt. Thus testing can probably be short range.

Information on reduced tar, ULT and Carlton 85 smoking as well as quitting will give generally valuable perspectives to Lorillard marketing.

And on that same page, if you would go to the third to the last sentence that starts with "Scientific literature"?

Scientific literature will be reviewed by Mr. A. W. Spears, who will forward generally useful papers.

And this is signed RES, which stands for Richard E. Smith as we said at the outset, who is the author. And that's Exhibit 2926 dated February 13th, 1980.

Your Honor, if you will, another document not yet admitted, Scott Exhibit

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0130.02.
THE COURT:
Give me the number again, please?
MR. CARTER:
0130.02.
THE COURT:
Any objection?
MR. WILLIAMS:
Preemption, Your Honor.
MR. LOUIS GERTLER:
Your Honor, may I approach?
THE COURT:
Let me have the document, please.
(At sidebar:)
MR. LOUIS GERTLER:
This is a document for Henningfield. We don't have to read it. We can skip this. Mr. Carter is not aware of this.
MR. CARTER:
I'm sorry?
MR. LOUIS GERTLER:
We are not going to read this one because we may read it with Mr. Henningfield.
MR. CARTER:
Great.
MR. WILLIAMS:
I'm confused.
THE COURT:
I understand the document is going to be withdrawn, so the objection irrelevant.
MR. WILLIAMS:

Okay, for now.
MR. LOUIS GERTLER:
We may use it later.
MR. WILLIAMS:
For now.
(In open court:)
THE COURT:
I understand you withdraw the Document 0130.02?
MR. CARTER:
Yes, Your Honor.
If Your Honor please, Scott Exhibit 2492.
THE COURT:
4492?
MR. CARTER:
2492.
THE COURT:
2429, excuse me.
Objection?
MR. WILLIAMS:
We stand on our previously submitted objections, Your Honor.
THE COURT:
I need to see the document. Anybody have a copy of that document?
MR. LOUIS GERTLER:
May I approach, Your Honor?
THE COURT:

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Yes.
(At sidebar:)
MR. LOUIS GERTLER:

It's authentic, by B&W.
THE COURT:
Is there any agreement as to who McCue and Steele are?
MR. WILLIAMS:
I don't object to Steele. He is an B&W employee, Your Honor.
THE COURT:
Okay. The objections I have are hearsay, relevance and Article 403; is that correct?
MR. WILLIAMS:
Yes. Primarily we want to emphasize here Article 403, particularly the language in here about nicotine being a poison.
MR. LOUIS GERTLER:
It is a poison.
THE COURT:
The objections are overruled. The document will be received.
MR. CARTER:
I'm sorry?
THE COURT:
Overruled. The document is in.
(In open court:)
THE COURT:
The objections are overruled. The document will be received in evidence.
MR. CARTER:
Thank you very much, Your Honor.
THE COURT:

You may publish.
MR. CARTER:
Carl, if you would, highlight the heading, the addressee, the author, the date, and the subject for the members of the jury.
I will try to assist, it reads: Memorandum, and it's underscored, and it's to M. J. McCue, it's from H. D. Steele, the date is August 24th, 1978. The subject matter: Future consumer reaction to nicotine, and it's also underscored.
Carl, would you kindly highlight the first paragraph of Exhibit 2492, the same document? And again, I will assist the members of the jury because it's somewhat blurred:
The purpose of this memo is to outline my views as to how consumer attitudes toward nicotine will change in the near future. In order to explain changes, I need to explain present attitudes toward nicotine.
If you would kindly highlight the first four lines of the next paragraph of this memo? I would like you, if you

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would, Carl, to enlarge the first sentence so we could read it?

I will read it again to the members of the jury because it is somewhat blurred:

Very few consumers are aware of the

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effects of nicotine, i.e., that is, its addictive nature and that nicotine is a poison.

If you would expand that paragraph, please, Carl, to the next two lines?

Most smokers view nicotine as the number that follows the, quote, tar, unquote, figure on cigarette packs. Hardly any consumers use nicotine numbers as a basis for their purchase.

And to complete this, Carl, would you kindly highlight the first two sentences of the last paragraph of this August 24th, 1978, memo? And if I might?

Consumer attitudes toward nicotine will not change too greatly in the near future. Information received from the Futures group suggests that smokers will become aware of the benefits of nicotine.

Now, if you would go down two sentences to highlight that one which begins with "Hence" and go through the entire -- or the remainder of that paragraph to complete this excerpt?

Hence, nicotine levels should drop assuming the current trend toward, quote, light, unquote, cigarettes continue. Nicotine levels will not be a major factor in the purchase decision in the future. It is very unlikely that the government will require a nicotine level to be printed on cigarette packaging.

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This memo of August 24th, 1978, to M. J. McCue was signed by HDS, that's H. D. Steele.

Your Honor, and members of the jury, I think it's lunchtime, and at this point we will stop the reading, unless the defendants have some comment?

THE COURT:

Do defendants wish to highlight any portion of that document?

MR. WILLIAMS:

I don't want to delay lunch, so I just have one sentence.

THE COURT:

One sentence. You may publish it.

MR. WILLIAMS:

Good afternoon, ladies and gentlemen.

Your Honor, may we highlight the one sentence and enlarge it?

THE COURT:

Yes.

MR. WILLIAMS:

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Specifically, high nicotine levels cause cigarettes to taste harsh, paren, or full taste, close paren, and lower levels of nicotine give cigarettes a milder taste. End sentence.

Thank you, Your Honor.

THE COURT:

We will recess for lunch at this point until 1:30 by the wall clock.

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(In open court without a jury present:)

THE COURT:

The record may reflect the jury has left the courtroom.

Anything for the record by plaintiffs counsel as a result of this morning's proceedings?

MR. RUSS HERMAN:

Your Honor, I believe we have now furnished an abbreviated Henningfield list of exhibits, and the list has been reduced considerably. I believe there are fourteen exhibits and a few demonstratives.

And Mr. Gertler will be here this afternoon to argue any objections to that modified list.

THE COURT:

And do I have a list of the demonstratives? Is that list the same as it was this morning?

MR. RUSS HERMAN:

I believe it's attached, Your Honor. I believe it's attached. I haven't seen it, but I believe it is.

THE CLERK:

So it's not a new list?

THE COURT:

I don't have it. Just make sure that my Law Clerk and the opposition gets a list of the demonstrative exhibits. And

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if there is some dispute, we will take it up this afternoon.

MR. RUSS HERMAN:

Yes, Judge.

THE COURT:

Anything by defense counsel as a result of the morning's proceedings?

MR. WITTMANN:

No, Your Honor.

MR. SHOLES:

Yes, Your Honor.

THE COURT:

Mr. Sholes?

MR. SHOLES:

Simply a request. We would like to request of counsel that when they are reading the exhibit, that they simply try not to comment on the exhibit.

More specifically, I would note Mr. Carter when he read, he stated: Would

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you now go to the line where it establishes the goal of the memo.

Well, we don't know if that's really what it is.

I'm sure he didn't mean to do anything, but we would request to read --

THE COURT:

I think it's inappropriate to add anything to the words that appear on the document, and that will be the rule.

MR. CARTER:

Thank you, Your Honor.

MR. GAY:

Your Honor, I have one point to add.

I think Your Honor has said we don't need to renew our objections to these depo cuts that we made in the depo designation hearings from here on out for the rest of the trial, they will be preserved?

THE COURT:

It's my understanding that once an objection is made and ruled upon, it need not be made or ruled upon again.

MR. GAY:

Thank you, Your Honor.

THE COURT:

We will recess until 1:30.

(Whereupon, the hearing recesses at 12:07 p.m.)

REPORTER'S CERTIFICATE

I, NICHOLAS A. MARRONE, CCR, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding.

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

_____

NICHOLAS A. MARRONE (CCR 21011)
CERTIFIED COURT REPORTER
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